

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,)	
)	Case No. 2:17-cv-01220
Plaintiff,)	
)	
v.)	
)	
DAVID M. EATON; LUCINDA L. EATON;)	
and the STATE OF WEST VIRGINIA,)	
)	
)	
Defendants.)	
_____)	

FIRST AMENDED COMPLAINT FOR FEDERAL TAXES

The United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this action to collect the unpaid federal taxes and statutory additions to tax owed by the defendants David M. Eaton and Lucinda L. Eaton, and to enforce the corresponding federal tax liens against certain real property located in Wood County, West Virginia, as follows:

JURISDICTION AND VENUE

1. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402 and 7403.
2. Venue properly lies in this judicial district pursuant to 28 U.S.C. §1391(b) and 28 U.S.C. §1386, because it is the district where liability for the taxes at issue accrued and where the real property that is the subject of the action is situated.

PARTIES

3. The plaintiff is the United States of America.
4. Defendants David M. Eaton and Lucinda L. Eaton are named as defendants because they are the taxpayers against whom the unpaid federal tax liabilities at issue in this action are assessed; because they reside in Vienna, West Virginia, within that judicial district, and because they have an interest in the subject real property.
 - a. Defendant David M. Eaton is the former owner and operator of multiple cable installation businesses, including West Net, Inc. and Western Networks, LLC. David M. Eaton is the current manager of Freedom Vapor LLC, a tobacco store in Parkersburg, West Virginia.
 - b. Defendant Lucinda L. Eaton is the wife of David M. Eaton and the former president of both WestNet, Inc. and Western Networks, LLC.
5. Defendant the State of West Virginia is named as a defendant because it may claim an interest in the real property which is the subject of this action.

COUNT I

Reduce Federal Tax Assessments to Judgment

6. Defendants David M. Eaton and Lucinda L. Eaton jointly filed U.S. Individual Income Tax returns (Forms 1040) for the taxable years ending on December 31, 2005, December 31, 2006, and December 31, 2008. In accordance with the income tax deficiencies reported on those returns, a representative of the Secretary of the Treasury properly and timely made assessments against David M. and Lucinda L. Eaton for the unpaid individual income taxes, penalties, and interest as follows:

Tax Type	Tax Period Ending	Assessment Date	Amount of Assessment	Outstanding Balance as of 12/03/2016
Individual Income Tax (Form 1040)	12/31/2005	01/08/2007 04/14/2008	\$43,881.00 (Tax per Return) \$241,231.00 (Additional Tax Assessed)	\$368,799.18
Individual Income Tax (Form 1040)	12/31/2006	05/04/2009	\$980,446.00 (Tax per Return)	\$2,305,529.68
Individual Income Tax (Form 1040)	12/31/2008	10/10/2011 03/19/2012	\$0.00 (Tax per Return) \$3,666.00 (Additional Tax Assessed)	\$724.06
Total Balance Outstanding as of 12/03/2016				\$2,405,052.92

7. Despite being given proper notice and demand for payment of the assessments described in paragraph 6, David M. Eaton and Lucinda L. Eaton neglected or refused to make full payment of those assessments, and as a result, statutory interest and penalties accrued on the income tax liabilities. As of December 3, 2016, the Eatons are indebted to the United States in the total amount of \$2,405,052.92, plus interest and penalties that have accrued and will continue to accrue thereafter as provided by law until the balance is paid in full.
8. Pursuant to 26 U.S.C. §§ 6321 and 6322, tax liens in favor of the United States arose on the dates of the assessments of the tax liabilities described in paragraph 6, above, and attached to all property and rights to property belonging to the defendants David M. and Lucinda L. Eaton, including the real property described below in paragraph 11, below.
9. On the dates shown below, the Internal Revenue Service recorded in the County Clerk's office of Wood County, West Virginia, notices of federal tax lien against David M. Eaton and Lucinda L. Eaton with respect to the tax assessments described in paragraph 6, above, and for the tax periods listed below:

Tax Period Ending	Date Lien Recorded	Tax Type(s)
12/31/2005	04/18/2013	Individual Income
12/31/2006	04/18/2013	Individual Income
12/31/2008	04/18/2013	Individual Income

COUNT II

FORECLOSURE OF FEDERAL TAX LIENS

10. The United States incorporates paragraphs 1 through 9 by reference, as if fully set forth herein.
11. The real property that is the subject of this foreclosure action is the personal residence of David M. Eaton, located at 5003 11th Avenue in Vienna, West Virginia. The property is titled in the names of David M. Eaton and Lucinda L. Eaton, as joint tenants with rights of survivorship, with each owner possessing a half interest in the property.
12. The United States of America, by virtue of the federal tax liens that encumber the real property described in paragraph 11, above, is entitled to have those liens foreclosed; the subject real property sold; and the proceeds from the sale applied to the unpaid balance of the tax liabilities owed by the taxpayers, David M. Eaton and Lucinda L. Eaton.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court:

- A. Enter judgment in favor of the United States and against the defendants David M. Eaton and Lucinda L. Eaton with respect to the tax assessments described in paragraph 6, above, in the amount of \$2,405,052.92 as of December 3, 2016, plus statutory interest and other additions to tax accruing thereafter until paid in full;

- B. Determine, adjudge and decree that, with respect to the assessments described in paragraph 6, above, the tax liens of the United States attached to the subject real property, and that the United States holds valid and subsisting liens against the subject real property;
- C. Order that the tax liens of the United States be foreclosed against the subject real property; that the subject real property be sold; and that the proceeds from the sale be distributed to the United States and to the other defendants according to the respective priorities of their liens and interest in the subject real property;
- D. Award the United States its costs incurred in prosecuting this action; and
- E. Such other and further relief as is just and proper.

Dated this 27th day of March 2017.

DAVID A. HUBBERT
Acting Assistant Attorney General,
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